Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Sprint PCS and AT&T File Petitions	)	
For Declaratory Ruling On	)	
CMRS Access Charge Issues	)	WT Docket No. 01-316
	)	

COMMENTS OF VERIZON WIRELESS

VERIZON WIRELESS

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SUMMARY

Verizon Wireless urges the Commission to grant Sprint PCS's requested relief in this proceeding and confirm that wireless carriers have the right to charge IXCs for access to their wireless networks. The Commission has long held that wireless carriers have the right to just and reasonable compensation for exchange access service. AT&T fails to provide any legal or policy reasons for the Commission to deviate from this long-standing policy. For the Commission to rule otherwise would place CMRS providers at a competitive disadvantage at a time when wireless carriers are beginning to offer true facilities-based competitive alternatives to wireline services.

The fact that per–minute billing for originating and termination access has not been widespread is not, as AT&T suggests, because CMRS carriers have been offering access service on a "bill-and-keep" basis. It is rather because CMRS carriers have had to overcome technical and administrative obstacles to be able to bill for access services. Contrary to AT&T's arguments, this lack of access billing does not justify prohibiting wireless carriers from collecting for these services. IXCs have enjoyed the windfall of free access to wireless networks for long enough.

The Commission should find that AT&T's refusal to pay Sprint PCS is unjust and unreasonable and unreasonably discriminatory in violation of Sections 201(b) and 202(a) of the Act. The Commission should rely on certain factors in determining whether Sprint PCS's access rates billed to AT&T were reasonable and allow Sprint PCS to recover all reasonable billed amounts for past services. On a prospective basis, the Commission should establish a presumptively lawful "zone of reasonableness" in which wireless carriers can price access services without filing tariffs.

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COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby submits its comments in response to the Commission's *Public Notice* in the captioned proceeding.[1] Verizon Wireless urges the Commission to grant Sprint PCS's requested relief, confirming that Sprint PCS and other CMRS providers have the right to charge IXCs for the provision of exchange access service.

DISCUSSION

This proceeding arises out of a primary jurisdiction referral from the U.S. District Court of the Western District of Missouri ("the Court"),[2] in which the Court sought the Commission's consideration of two issues: (1) whether Sprint PCS may charge AT&T for access to its wireless network; and (2) if so, the reasonableness of Sprint PCS's charges for such services.[3] Sprint PCS brought this dispute before the Court based on AT&T's failure to pay Sprint PCS for the

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1 "Sprint PCS and AT&T File Petitions For Declaratory Ruling On CMRS Access Charge Issues," *Public Notice,* DA 01-2618, WT Docket No. 01-316 (rel. Nov. 8, 2001).

2 *Sprint Spectrum L.P. v. AT&T Corp.,* Civil Action No. 00-00973-W-5 (W.D. Mo. July 24, 2001) ("*Primary Jurisdiction Referral Order*").

3 *Id.*, slip op. at 11.

use of its commercial mobile radio ("CMRS") network to terminate long distance calls and for originating 8YY (such as 800 or 888) calls to AT&T 8YY customers.[4]

In response to the Court's referral, Sprint PCS and AT&T both filed petitions for declaratory ruling with the Commission seeking action on the primary jurisdiction referral.[5] Sprint PCS argues that there is no federal law or policy that bars Sprint PCS from recovering its call termination costs from AT&T, and that AT&T's refusal to pay Sprint PCS is unreasonably discriminatory and unjust and unreasonable in violation of the Communications Act ("Act"). In its petition, AT&T details the development of access charges in the wireline context and urges the Commission to find that wireless carriers are prohibited from imposing access charges on IXCs. AT&T argues that if the Commission permits wireless carriers to charge IXCs for exchange access service, these charges should be capped at the reciprocal compensation rates set by state commissions for local traffic.

The Commission should grant Sprint PCS's petition and confirm that CMRS providers are entitled to charge IXCs a reasonable rate for switched access service and that AT&T's failure to pay Sprint PCS violates the Act. With respect to access pricing, the Commission has already set forth a series of market factors it will consider when

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[4] The Commission is also considering the matters at issue in the dispute between Sprint PCS and AT&T in CC Docket No. 01-92. Developing a Unified Intercarrier Compensation Regime, *Notice of Proposed Rulemaking,* CC Docket No. 01-02 (rel. April 27, 2001). Verizon Wireless recently submitted reply comments in that proceeding urging the Commission to find that CMRS providers are entitled to receive just and reasonable compensation from IXCs for switched access service. *See* Reply Comments of Verizon Wireless, CC Docket No. 01-92 (Nov. 5, 2001).

[5] Sprint PCS Petition For Declaratory Ruling (Oct. 22, 2001) ("*Sprint PCS Petition*"); AT&T Petition For Declaratory Ruling (Oct. 22, 2001) ("*AT&T Petition*").

examining the reasonableness of CLEC access rates, and the Commission should use these same factors to determine whether Sprint PCS's rates are reasonable. The Commission should reject AT&T's request to cap wireless access rates and instead adopt a framework similar to the one it established for CLEC-IXC access.

I. SPRINT PCS AND OTHER CMRS PROVIDERS ARE ENTITLED TO RECEIVE JUST AND REASONABLE COMPENSATION FROM AT&T AND OTHER IXCS FOR SWITCHED ACCESS SERVICE

In its petition, AT&T claims that, for interconnection between CMRS providers and IXCs, the "prevailing industry method" and "uniform industry practice" has been bill-and-keep.[6] This claim is not only misleading, it also ignores the fundamental fact that, under Commission precedent, CMRS providers have long had authority to charge IXCs for exchange access service. AT&T provides neither a legal or policy justification for its failure to pay Sprint PCS for the charges at issue in its dispute with Sprint PCS, and the Commission should therefore find that AT&T's refusal to pay is a violation of the Act.

A. The Commission Has Long Confirmed That CMRS Providers Have The Authority To Charge IXCs for Exchange Access Service

The Act permits telecommunications carriers to charge for services they provide, including access services. As early as 1987, the Commission confirmed that CMRS providers are entitled to just and reasonable compensation for the provision of access.[7] The Commission

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6 *See*, *e.g.*, *AT&T Petition* at 12-13.

7 Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, *Declaratory Ruling,* 2 FCC Rcd 2910, 2915 (1987).

reiterated this view in 1994 in its proceeding on wireless equal access obligations.[8] Also in 1994, the Commission adopted a temporary detariffing policy for CMRS access charges, an action that again reflected its view that CMRS providers are free to impose such charges.[9] Then, in 1996, the Commission tentatively concluded that CMRS providers should be permitted to recover specific access charges from IXCs. Not only did the Commission find no legal obstacle to CMRS carriers' recovery of access charges, it in fact concluded that "any less favorable treatment of CMRS providers would be unreasonably discriminatory and would interfere with our statutory objectives and ongoing commitment to foster the development of new wireless services such as CMRS."[10] Nothing has occurred to alter this analysis. Indeed, in its *Local Competition Order*, the Commission found that nothing in the Telecommunications Act of 1996 had modified its existing access charge regime.[11]

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8 Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, *Notice of Proposed Rulemaking and Notice of Inquiry,* 9 FCC Rcd 5408, 5447 (1994).

9 Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, *Second Report and Order,* 9 FCC Rcd 1411, 1498 (1994) ("*CMRS Second Report and Order*").

10 Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, *Notice of Proposed Rulemaking*, CC Docket No. 94-54, 11 FCC Rcd 5020, 5075 (1996) ("*CMRS Access Notice*").

11 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order,* 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

Since 1996, in a variety of proceedings, the Commission has consistently identified competitive and technological neutrality as an important objective.[12] This goal would be well served by a definitive pronouncement in this proceeding that CMRS providers can charge IXCs a reasonable rate for switched access service.

The discriminatory nature of AT&T's favored policy is made clear by the fact that all wireline ILECs and CLECs can currently impose access charges on interconnecting IXCs. While it is true that the Commission is at varying stages of access reform with respect to the different carrier categories,[13] all of these LECs will continue to impose access charges for some time. In light of the Commission's policy toward other industry segments, the Commission's access charge framework will be technologically neutral only if Sprint PCS and other CMRS providers can charge IXCs for switched access in the same manner. Like wireline carriers, broadband CMRS operators provide telephone exchange service, and, as such, also provide

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[12] *See*, *e.g.*, Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, 8801-06 (1997); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Second Report and Order*, 14 FCC Rcd 10954, 10966 (1999); Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Order on Remand*, 15 FCC Rcd 385, 390 n.20 (1999).

[13] Specifically, for price cap ILECs, the Commission's *CALLS Order* established interstate access levels that these carriers will be able to charge through June 30, 2005. Access Charge Reform, *Sixth Report and Order*, CC Docket No. 96-262, 15 FCC Rcd 12962 (2000). In the case of non-price cap ILECs, the Commission recently adopted a plan to reform interstate access charges for rural carriers. *See* Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, *Second Report and Order and Further Notice of Proposed Rulemaking,* FCC No. 01-304, CC Docket Nos. 00-256, 96-45, 98-77, 98-166 (rel. Nov. 8, 2001). In its April 2001 *CLEC Access Order*, the Commission ruled that CLECs can charge IXCs for access at tariffed rates at or below a "presumptively just and reasonable" threshold, or, alternatively, can seek access rates above this threshold through the negotiation process. Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers, *Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 9923, ¶ 40 (2001) ("*CLEC Access Order*").

exchange access service.[14] The FCC should confirm that Sprint PCS and other CMRS providers have the same rights as their wireline counterparts and may charge IXCs for access to their wireless networks, especially given that CMRS providers now offer "real competitive choices" to wireline services and are "the best hope for competition for residential consumers."[15]

B. AT&T Presents No Policy Reason That Justifies a Prohibition on CMRS-IXC Access Charges

AT&T makes a number of policy arguments against permitting Sprint PCS and other CMRS providers to charge IXCs for switched access service. Key to these arguments is AT&T's claim that, with the recent exception of Sprint PCS, wireless carriers and IXCs have uniformly relied on a bill-and-keep approach to the provision of switched access.[16]

Although AT&T is correct that per-minute billing for originating and terminating access by CMRS providers has not been widespread, this is not the result of any belief by wireless carriers that they do not have the right to impose such charges. This instead reflects the fact that CMRS providers have had to resolve a variety of technical and administrative issues to be able to bill IXCs. For instance, CMRS providers have had to establish provisions in interconnection contracts with LECs before billing for access on a per–minute basis because CMRS providers must rely on LEC-provided information to bill IXCs. In addition, until recently wireless carriers

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[14] As interpreted by the Commission in its *Local Competition Order*, the Communications Act encompasses CMRS within its definition of telephone exchange service. 47 U.S.C. § 153(47); *Local Competition Order,* ¶ 1013.

[15] *See, e.g.,* "Digital Broadband Migration – Part II," FCC Chairman Michael K. Powell, Speech at FCC Press Conference (Oct. 23, 2001); Shawn Young, "More Callers Cut Off Second Phone Lines for Cellphones, Cable Modems," Wall Street Journal, Nov. 15, 2001, at B1.

[16] *See AT&T Petition* at 2.

did not have experience with the Carrier Access Billing System ("CABS") necessary to bill for access. Unlike end user or local interconnection billing, the telecommunications industry has agreed to adhere to Ordering and Billing Forum ("OBF") standards for billing access. Third-party vendors have emerged that specialize in these billing services, providing wireless carriers the critical ability to outsource this billing. Certainly a technical inability to bill on a per–minute basis for access does not constitute a waiver of the right to do so.

AT&T claims that, given CMRS providers' limited collection of access charges, wireless carriers "have had no reasonable settled expectation of receiving access payments from IXCs," and "had no basis for relying on the existence of such payments in making their investments or in setting their end user rates."[17] As a result, according to AT&T, a decision now to permit Sprint PCS and other wireless providers to recover access charges would result in a wholly unjustified "windfall."[18] With this argument, AT&T turns logic on its head. In applying access charges, CMRS providers seek not a "windfall" but fair compensation for the use of their wireless networks. As AT&T itself acknowledges, "Sprint undoubtedly incurs costs in delivering calls to and from AT&T's network."[19] Access charges are a legitimate means of recouping those costs. The fact that AT&T has previously escaped the obligation to pay for legitimately provided services does not justify its continued refusal to pay for such services when

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[17] *Id*. at 13, 20.

[18] *Id.* at 4.

[19] *Id.* at 14.

billed appropriately.[20] Quite simply, it is the IXCs, not CMRS providers, that have for some time enjoyed a windfall by having free access to wireless customers.

AT&T also asserts that CMRS providers are able to recover the cost of originating and terminating access through their unregulated end-user rates, including unregulated airtime charges for subscribers receiving calls, and that wireless carriers as a result should not be permitted to charge IXCs directly for such access.[21] AT&T ignores the law. The Commission has already determined that the existence of end-user payments is irrelevant when determining whether inter-carrier compensation should apply in a particular circumstance. As Sprint PCS pointed out in its Petition, the Commission has ruled:

> [W]e reject NYNEX's argument that mutual compensation for [interstate] switching is inappropriate because the cellular operator may be recovering its costs from its subscribers. Rather, we agree with the cellular oppositions that a cellular carrier's subscriber rates, or the costs recovered, are not germane to the issue of mutual compensation arrangements between co-carriers. [22]

As Sprint PCS further noted, the Commission has also dismissed the significance of end-user charges in the context of inter-carrier compensation for local intrastate traffic.[23] There, while wireless providers typically charge customers for receiving local calls, the Commission

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[20] *Sprint PCS Petition* at 5.

[21] *AT&T Petition* at 18.

[22] *Sprint PCS Petition* at 7 (citing Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, *Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd 2369, 2373 ¶ 27 (1989)).

[23] *Sprint PCS Petition* at 7.

has ruled that originating carriers must still compensate those CMRS providers for their termination costs.[24]

Finally, AT&T warns that that allowing CMRS-IXC access charges would necessarily give rise to pervasive regulatory regime at both the state and federal levels.[25] This argument is undermined, however, by the Commission's decision in the *CLEC Access Order*. In that proceeding, the Commission established pricing rules for CLEC-IXC access, and the resulting regulatory framework is neither onerous nor pervasive. As discussed further below, the *CLEC Access Order* established that it is presumptively lawful for CLECs to charge access rates up to a specified benchmark or the rate of the competing ILEC, whichever is higher,[26] and the Commission should adopt a similar policy in the CMRS-IXC context.

C. AT&T's Refusal to Compensate Sprint PCS for Switched Access Violates The Act

AT&T's refusal to compensate Sprint PCS for access charges that Sprint PCS had sought to recover clearly violates the Act. Section 201(b) provides that "any charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful." The Commission has rejected attempts by carriers refusing to pay what the carrier views as unreasonably high access rates. For instance, in 1999 the Commission reviewed a dispute between AT&T and a CLEC, MGC, in which MGC provided originating access service to

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[24] *See* 47 C.F.R. § 71.703(a); *First Local Competition Order*, 11 FCC Rcd at 15517, 15997, 16016, 16018.

[25] *AT&T Petition* at 3.

[26] *CLEC Access Order,* 16 FCC Rcd at 9941.

AT&T, and AT&T continued to accept, but not pay for, the service.[27] AT&T claimed that it had attempted to terminate its relationship with MGC and that MGC's continued provision of originating access amounted to the "conferral of an unwanted benefit."[28] The Commission concluded that AT&T failed to take unequivocal steps to terminate its relationship with MGC, primarily because it did not wish to inconvenience its own customers,[29] and that AT&T's failure to pay MGC was an unreasonable practice under Section 201(b) of the Act.[30]

Just as in the MGC case, AT&T's decision to withhold payment from Sprint PCS is unjust and unreasonable.[31] AT&T's action is especially egregious given that its very ability to collect revenue on calls to and from wireless subscribers is dependent on the availability of exchange access service. As Sprint PCS points out, there is simply no legitimate legal basis for AT&T's claim that it is entitled to free access.

Section 202(a) of the Act makes it unlawful "for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services." There is a three-pronged test for determining whether a carrier's conduct violates the anti-discrimination provision of section 202(a): "(1) whether the services at issue are 'like'; (2)

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27 MGC Communications, Inc. v. AT&T Corp., *Memorandum Opinion and Order,* 14 FCC Rcd 11647, 11649 (1999).

28 *Id.* at 11650.

29 *Id.* at 11655-56.

30 *Id.* at 11659.

31 Unlike in the context of reciprocal compensation for local traffic, the Act does not require the existence of a contract for the IXC to be obligated to pay access charges.

if the services are 'like,' whether the carrier treats them differently; and (3) if the carrier treats the services differently, whether the difference is reasonable."[32]

Landline LECs and CMRS providers both provide AT&T and other IXCs with originating and terminating exchange access service. From a functional perspective, these services are identical, or "like" in both the landline and wireless scenarios. This switched access enables AT&T successfully to complete calls made by its customers. As AT&T concedes, however, it does not treat providers of exchange access service equally.[33] While it compensates landline ILECs and CLECs for their provision of access, AT&T refuses to pay Sprint PCS and other CMRS providers for this service. As AT&T makes clear, this refusal is based entirely on the fact that Sprint PCS and other CMRS providers use wireless transmission facilities to provide this access.[34] Such technological differences are irrelevant to the question of whether the exchange access provider is entitled to payment for services rendered. Accordingly, AT&T's practice constitutes unreasonable discrimination in violation of Section 202(a).

II. THE COMMISSION SHOULD REVIEW SPRINT PCS'S RATES BASED ON CERTAIN MARKET FACTORS AND ESTABLISH A "ZONE OF PRESUMPTIVE REASONABLENESS" FOR CMRS ACCESS CHARGES

Given that the right of CMRS providers to charge IXCs for access is well established, the only remaining issue is whether the rates that Sprint PCS charged AT&T are reasonable. Verizon Wireless takes no position on the reasonableness of Sprint PCS's access rates but rather recommends the factors that the Commission should consider in making this determination. The

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[32] *MCI Telecommunications Corp. v. FCC,* 917 F.2d 30, 39 (D.C. Cir. 1990).

[33] *AT&T Petition* at 17.

[34] *Id.* at 17-19.

Commission should establish a "zone of reasonableness" for wireless access charges to avoid the need for future case-by-case review, and retain its detariffing policy with respect to wireless access charges.

A. The Commission Has Already Established A Series of Factors To Consider When Determining the Reasonableness of Access Rates

AT&T argues that if CMRS providers are permitted to charge IXCs for exchange access service, wireless access rates should be capped at the TELRIC rates applied by state commissions for the transport and termination of local exchange traffic and applied on a prospective basis only.[35] This proposal is inherently inequitable and conflicts with the Commission goals of regulatory parity and technological neutrality.

As an initial matter, the Commission should reject AT&T's suggestion that Sprint PCS should not be permitted to recover previously billed exchange access charges. As demonstrated above, AT&T's refusal to pay Sprint PCS was an unjust and unreasonable practice and unreasonably discriminatory, and AT&T should not be permitted to profit from its actions by being excused from payment. Wireless carriers provide exchange access, which is a service no different from the exchange access service offered by LECs and CLECs except with respect to whether the service is offered by wire or radio. The fact that the Commission has not regulated wireless access rates or required wireless carriers to tariff these offerings does not change the fact that wireless carriers have provided these services for many years to IXCs, in most cases for

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[35] *AT&T Petition* at 4-5, 24.

free. The Commission should require IXCs to pay for these services, whether billed for in the past or future, as long as the wireless carrier's rates are reasonable.

To determine whether the rates Sprint PCS charged AT&T were reasonable, the Commission could use the factors it recently applied when examining the reasonableness of CLEC access rates. These include: (1) the access rates of ILECs operating within the same territory; (2) access rates charged by other CLECs; (3) the CLEC's end user rates and how they compare to the predominant ILEC's end user rates; (4) the disparity between the CLEC's access and reciprocal compensation rates; and (5) the downward trend of access for the relevant period.[36] Many of these factors would be useful in assisting the Commission to establish whether Sprint PCS's rates were reasonable. In addition, the Commission should consider other wireless carriers' access rates and other wireless market-specific factors.

Contrary to AT&T's arguments, TELRIC reciprocal compensation rates would not be appropriate surrogates for wireless access rates. Wireline access rates today are not based on TELRIC, and forcing the wireless industry segment to base its rates on TELRIC when wireline carriers do not charge TELRIC rates would not be technologically neutral. In addition, TELRIC was always intended to reflect the cost of the elements of interconnection – by name it is "Total *Element* Long Run Incremental Cost" – not the cost of providing a service such as access. As discussed below, rather than forcing wireless carriers to charge TELRIC access rates, the Commission should establish a presumptively lawful "zone of reasonableness" for wireless access rates.

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[36] *CLEC Access Declaratory Ruling,* ¶ 3 (citing AT&T Corp. v. Business Telecom, Inc; Sprint Communications Company, L.P. v. Business Telecom, Inc., EB-01-MD-001, EB-01-MD-002, *Memorandum Opinion and Order,* FCC 01-185 (May 30, 2001).

B. A Zone of Presumptively Reasonable Switched Access Rates Will Ensure That CMRS Providers Can Recover Charges from IXCs.

Under Section 201(a) of the Act, common carriers have a duty to accept a "reasonable request" for service.[37] In the *CLEC Access Order,* the Commission confirmed that when a customer "attempts to call from and/or to an access line served by a CLEC with presumptively reasonable rates, that request for communications service is a reasonable one that the IXC may not refuse without running afoul of section 201(a)."[38] The FCC recently confirmed this decision, finding that although IXCs do not have the obligation to accept traffic from and terminate traffic to CLECs regardless of their switched access rates, IXCs remain under a continuing obligation to accept that service until another rate is established through negotiation or litigation.[39]

Given that the switched access service that wireless carriers offer is no different from the IXC's perspective than the service CLECs offer, IXCs should be compelled to pay a CMRS provider's "presumptively reasonable" rate, as it must for CLECs. Presumptively reasonable rates can be established in a variety of ways. For instance, the CMRS carrier and IXC could agree in a contract to the rates and terms for originating and terminating access. Alternatively, if the CMRS carrier and IXC could not agree, the Commission could establish a zone of reasonableness that would be presumptively lawful. As long as a CMRS provider priced access within this zone, the IXC would not have grounds to refuse to pay, or to block traffic.

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[37] 47 U.S.C. § 201(a).

[38] *CLEC Access Order,* ¶ 24.

[39] AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues, *Declaratory Ruling,* CCB/CPD No. 01-02, FCC No. 01-313, ¶¶ 13-19 (rel. Oct. 22, 2001).

In the *CLEC Access Order*, the Commission adopted a "presumption of reasonableness" for CLEC access charges.[40] Under this policy, tariffed CLEC access charges that are at or below a certain threshold are viewed by the Commission as presumptively just and reasonable. If an IXC challenges a CLEC's tariffed access rate below this threshold, the burden is on the IXC to demonstrate that the CLEC's access charge is unjustified. At the same time, CLECs can seek access rates above this "safe harbor" threshold through the negotiation process. The Commission has adopted a mandatory detariffing policy for any access rates above this threshold.

As it did for CLECs, the Commission should determine that CMRS access rates at or below a given threshold are presumptively just and reasonable, placing the burden on any IXC to demonstrate that any such rate is unlawful. On the other hand, any CMRS access charge above this threshold that is not the product of negotiations should be deemed presumptively unreasonable, and, if challenged, any CMRS provider unilaterally imposing such a rate should be required to justify the lawfulness of that charge.

C. The Commission Should Retain Its Current Policy of Detariffing All CMRS, Including Access Charges

The Commission is under no statutory or other obligation to require CMRS providers to tariff access services. As the FCC has already recognized, Congress granted the FCC specific authority to forbear from the tariffing requirements of Section 203 of the Act.[41] The Commission should therefore retain its policy of mandatory detariffing for all CMRS access rates.

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40 *CLEC Access Order,* ¶ 41.

41 *CMRS Second Report and Order,* 9 FCC Rcd at 1478-81.

If the Commission establishes a "zone of reasonableness" that is presumed lawful, CMRS providers should be able simply to bill for these presumptively lawful access charges, which IXCs would then be obligated to pay. As indicated above, IXCs could still challenge these access rates through the Section 208 complaint process,[42] but in that proceeding they would face the burden of demonstrating the unreasonableness of these charges.

The detariffing of CMRS access charges would be consistent with the Commission's general approach to CMRS regulation, and also with its policy in other service contexts. In the *CMRS Second Report and Order* in 1994, the Commission established a permanent, mandatory detariffing policy for interstate service to end-users, and a temporary detariffing policy for CMRS providers' provision of interstate access service.[43] In doing so, the Commission identified numerous public interest benefits from this detariffing. In a competitive environment, the Commission noted that requiring tariffing filings can (1) take away carriers' ability to make rapid, efficient responses to changes in demand and cost and remove incentives for carriers to introduce new offerings; (2) impede and remove incentives for competitive price discounting, because all price changes are public, which can therefore be quickly matched by competitors; and (3) impose costs on carriers that attempt to make new offerings.[44] The absence of tariff

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42 47 U.S.C. § 208.

43 *CMRS Second Report and Order,* 9 FCC Rcd at 1479.

44 *Id.* The Commission also found several other disadvantages, acknowledging that tariff filings enable carriers to ascertain competitors' prices and any changes to rates, which might encourage carriers to maintain rates at an artificially high level. The Commission also found that tariffs may simplify tacit collusion as compared to when rates are individually negotiated, since publicly filed tariffs facilitate monitoring. Tariffing, with its filing and reporting requirements, also imposes administrative costs upon carriers. These costs could lead to increased rates for consumers and potential adverse effects on competition. *Id.*

filing requirements and the attendant notice periods promote competition by enabling wireless carriers to respond quickly to competitors' price changes.

For similar reasons, the Commission in 1996 decided to prohibit non-dominant IXCs from filing tariffs for the provision of interstate, domestic interexchange service.[45] Later that year, the Commission again cited many of these competitive and administrative factors in adopting a permissive detariffing policy for the provision of interstate access services by non-ILEC providers.[46]

A decision by the Commission to retain the detariffing of CMRS access charges would yield many of these same public interest benefits. In particular, maintaining the Commission's detariffing policy would be efficient, both for carriers and the Commission, because the Commission could forego the prospect of countless new CMRS access tariff filings. This detariffing of CMRS access would also enhance wireless carriers' price flexibility and their ability to adjust rapidly to new competitive conditions. Consumers would ultimately benefit from this increased competitiveness through lower service charges and rates.

III. CONCLUSION

For the foregoing reasons, the Commission should confirm that Sprint PCS and other wireless carriers may collect reasonable access charges from IXCs. The Commission should find AT&T's conduct in declining to pay Sprint PCS for these services is a violation of the Act,

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45 Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order*, 11 FCC Rcd 20730, 20760-61 (1996). The Commission's decision was upheld by the D.C. Circuit Court in 2000. *MCI WorldCom v. FCC*, 209 F.3d 760 (D.C. Cir. 2000).

46 Hyperion Telecommunications, Inc. Petition for Forbearance, *Memorandum Opinion and Order*, 12 FCC Rcd 8596, 8608-11 (1997).

and the Commission should review Sprint PCS's rates based on certain factors. The Commission

should separately establish a presumptively lawful "zone of reasonableness" for wireless access rates that wireless carriers can recover without the need for tariffs.

Respectfully submitted,

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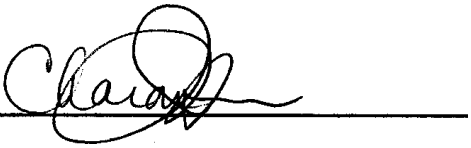
By: 

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